

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL BARNHART,

Plaintiff,

Case No. 1:17-cv-647

v.

BANK OF AMERICA, N.A., et al.,

HON. JANET T. NEFF

Defendants.

/

OPINION AND ORDER

Plaintiff, proceeding pro se, filed this action against Bank of America, N.A. (“Bank of America”) and ten “John Does” in state court, seeking to challenge, for at least the third time, the foreclosure and sale of certain real property. Bank of America removed the matter to this Court and moved to dismiss this case based on res judicata grounds. Plaintiff has moved to remand the case back to state court. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R, ECF No. 17), recommending that this Court deny Plaintiff’s motion, grant Bank of America’s motion, dismiss Plaintiff’s claims against the unidentified Doe defendants for failure to timely effect service, and terminate this action. The matter is presently before the Court on Plaintiff’s objections to the Report and Recommendation (ECF No. 18), to which Bank of America has filed a response (ECF No. 19). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

I

Plaintiff first objects to the recommended denial of his motion to remand, which was based on the purported lack of diversity between Plaintiff and Bank of America. Federal district courts have original jurisdiction over “all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between ... citizens of different states.” 28 U.S.C. § 1332(a). *See also* 28 U.S.C. § 1441(a) (authorizing removal of cases from state to federal court). Plaintiff argues that “Bank of America, N.A. has branch offices in Michigan and therefore, diversity jurisdiction does not apply” (Objs., ECF No. 18 at PageID.382). However, as the Magistrate Judge properly explained, complete diversity exists in this matter where Plaintiff is a citizen of Michigan and Bank of America’s *primary* place of business is in North Carolina (R&R, ECF No. 17 at PageID.376 [emphasis added]).

Plaintiff also argues that the amount-in-controversy requirement for diversity jurisdiction is not satisfied in this case (Objs., ECF No. 18 at PageID.382-384). Plaintiff’s argument lacks merit. Although Plaintiff did not identify a sum certain in his state-court complaint, the object of his complaint is a mortgage loan on the subject property in the amount of \$134,400.00 (Compl. ¶ 88, ECF No. 1 at PageID.29, 35). As this Court has previously stated, the amount-in-controversy requirement is satisfied where the complaint sets forth facts from which an amount in controversy well in excess of \$75,000.00 can be ascertained. *Barnhart v. Nationstar Mortg., LLC*, No. 1:15-cv-627, 2016 WL 424699, at *2 (W.D. Mich. Feb. 4, 2016), aff’d sub nom. *Barnhart v. Nationstar Mortg., LLC, et al.* (Feb. 29, 2016). Plaintiff’s objection is properly denied.

II

Next, Plaintiff objects to the Magistrate Judge’s recommendation to grant Bank of America’s motion to dismiss. However, Plaintiff’s “objection” merely restates, nearly verbatim, the arguments he set forth in his response in opposition to Bank of America’s motion to dismiss (ECF No. 15). His objection does not address, let alone demonstrate error in, the Magistrate Judge’s res judicata analysis. *See* W.D. Mich. LCivR 72.3(b) (requiring an objecting party to “specifically identify the portions of the proposed findings, recommendations or report to which objections are made and the basis for such objections”). The Court determines that the Magistrate Judge carefully and thoroughly considered the record, the parties’ arguments, and the law governing Plaintiff’s claims. For the reasons stated in the Report and Recommendation, the Court agrees that Bank of America is entitled to the dismissal it seeks. This objection is also properly denied.

III

Therefore, having determined that Plaintiff’s objections are properly denied, this Court adopts the Magistrate Judge’s Report and Recommendation as the Opinion of this Court, including the Magistrate Judge’s recommendation to dismiss the ten unidentified John Does for failure to timely effect service. As this Opinion and Order resolves all pending claims, the Court will also enter a Judgment. *See* FED. R. CIV. P. 58. Accordingly:

IT IS HEREBY ORDERED that the Objections (ECF No. 18) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 17) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff’s Motion to Remand (ECF No. 11) is DENIED.

IT IS FURTHER ORDERED that Defendant Bank of America N.A.'s Motion to Dismiss (ECF No. 10) is GRANTED.

IT IS FURTHER ORDERED that Plaintiff's claims against the ten unidentified John Does are DISMISSED for failure to timely effect service.

This case is CLOSED.

Dated: March 15, 2018

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge